IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.784 OF 2006

In

NOTICE OF MOTION NO.2428 OF 2006

In

SUIT NO.3226 OF 1997

Union of India : Appellants

(Orig.Plaintiffs)

V/s.

Suresh Jayantilal Thanawala & Ors. : Respondents

(Orig.Defendants)

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Mr.B.A.Desai, Additional Solicitor General, with Mr.S.R.Rajguru and Mr.A.M.Sethna i/b. Mr.Pankaj Kapoor for the appellants.

Mr.T.N.Subramaniam, senior counsel, with Mr.S. Kotak i/b. Purnanand & Co., for respondent nos.1 & 2.

Mr.T.N.Subramaniam, senior counsel, with Mr.Sandeep Aole i/b. Udwadia & Udeshi for respondent no.3.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : DECEMBER 13, 2006.

P.C.

1. We heard Mr.B.A.Desai, Additional Solicitor General for the appellants and Mr.T.N.Subramaniam, senior counsel for the respondent nos.1 to 3.

2. Appeal is admitted and disposed of finally at this stage.

3. It is not necessary to go into the chequered history of the case. Suffice it to say that the appellants are the plaintiffs in the suit for declaration that they are owners of the suit land bearing survey no.139/CTS no.1 situate at village Trombay, Pestonshah Salt Works, Mumbai, admeasuring about 49 acres and 38 gunthas. The plaintiffs have also prayed for declaration that the sale of the suit land by the defendant nos.1 and 2 is null and void and illegal. They have also prayed for declaration that the proceedings initiated under section 20 of the Maharashtra Land Revenue Code, 1966 and culminated in revision order dated 12.6.1996 passed by the Revenue Minister, Government of Maharashtra, is void ab initio and are of no legal consequence and the defendants are not entitled to claim any title over the suit land on the basis of the said decision. Few other reliefs have also been prayed for in the suit. It is pertinent to notice that the suit was filed on 17.7.1997. The present respondent nos.1 to 3 are the defendants in the suit. It appears that they took out a Notice of Motion purporting to be under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint. By order dated 17.1.2000, the plaint was ordered to be rejected under Order VII Rule 11(d), being barred by

limitation. The order was carried in appeal before the Division Bench. The appeal was dismissed on 10.7.2000. Against the concurrent orders dated 17.1.2000 and 10.7.2000, the matter was carried to the Supreme Court. The Supreme Court set aside the said orders and restored the suit to the file of this Court. The plaintiffs were permitted to amend the plaint which they did. Liberty was granted to the defendants to make an application raising preliminary objections, including objection as to the maintainability of the suit on the ground of limitation. The Supreme Court observed that if such an application was made, the High Court may dispose of the same on merit within a period of six months from the date of its filing.

4. After the amendment was carried out in the plaint, pursuant to the liberty granted by the Supreme Court, the defendants took out a Notice of Motion raising preliminary objection about the maintainability of the suit, both on the count of limitation as well as the suit being barred under section 20 of the Maharashtra Land Revenue Code, 1966.

5. It is unfortunate that despite the order of the Supreme Court dated 19.9.2001 being categorical and clear, the parties continued to agitate the avoidable controversy; the case of the defendants being that the

plaint be rejected being barred by law, while the case of the plaintiffs being that all issues in the suit must be tried together as provided under Order XIV Rule 2(1) of the C.P.C. It appears that precious time of the Court was lost on this controversy.

6. By the order dated 28.4.2003, the trial Judge observed that the question of limitation has to be decided first and, accordingly, directed the plaintiffs to file affidavit of evidence, if any, on the issue of limitation. Both the parties were also directed to file affidavit of documents relevant to that issue. Thereafter, by the order dated 15.3.2005, the trial Judge framed the following preliminary issue:-

> "Whether the claim in the suit is barred by law of limitation provided under Section 20 of the Maharashtra Land Revenue Code, 1966, and under the Limitation Act 1965, as alleged by the defendants".

7. In between the orders dated 28.4.2003 and 15.3.2005, we are informed by the senior counsel for the defendants that the plaintiffs filed affidavits in lieu of examination-in-chief of its witnesses; the said witnesses were cross-examined and the plaintiffs closed their evidence. On the other hand, the Additional Solicitor General condends that the issue of limitation and the suit being barred under section 20 of the

Maharashtra Land Revenue Code, 1966 was framed by the order dated 15.3.2005 and, therefore, the evidence led earlier is not sufficient to meet the said issue.

8. Now by the impugned order dated 28.9.2006, the trial Judge has disposed of the Notice of Motion taken out by the plaintiffs and held that the Motion taken out by the plaintiffs has to be dismissed and that the Notice of Motion taken out by the defendants under Order VII Rule 11 needs to be decided.

9. The proceedings reflect confusion worst confounded amongst the parties. They have been making applications after applications without letting the Court to decide the preliminary issue that has been framed on the basis of the application made by the defendants pursuant to the liberty granted by the Supreme Court that the suit is barred by the law of limitation and also under section 20 of the Maharashtra Land Revenue Code.

10. What is important is not the label given to the application and the provision of law invoked by the defendants. The substance of the matter is that the Supreme Court by its order dated 19.9.2001 granted liberty to the defendants to raise preliminary objections

about the maintainability of the suit, including the ground of limitation and the High Court was requested to dispose of the said application on merits within a period of six months from the date of its filing.

11. Having observed the aforesaid position, in our view, the interest of justice shall be served by the following order:-

(i) The plaintiffs may lead their evidence additionally, if they so desire, to meet the preliminary objections by filing affidavit on or before 31.1.2007.

(ii) The plaintiffs shall also make the said witnesses available for cross-examination on the dates that may be fixed by the learned trial Judge and ensure that no adjournment is sought in that regard.

(iii) We record and accept the statement of the senior counsel for the defendants that they do not intend to lead any evidence on the preliminary issue.

(iv) We request the learned trial Judge to hear and decide the preliminary issue expeditiously and by 31.3.2007, if possible.

(v) Needless to say that by its order dated 19.9.2001, the Supreme Court desired that the preliminary issue be decided within six months from the date of the application by the defendants. More than five years have elapsed and the said issue is yet to be decided. In the circumstances, the learned trial Judge may take up the matter on day-to-day basis, if possible, for decision on the preliminary issue.

(vi) Order accordingly.

R.M. LODHA, J.

S.A. BOBDE, J.